IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 11576 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MV TRIVEDI

Versus

DIST. DEVLP. OFFICER

Appearance:

1. Special Civil Application No. 11576 of 1994
MR SV PARMAR for Petitioner No. 1
MR JD AJMERA for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

1. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 10th September 1990 (Annexure "D") passed by the respondents-authorities, whereby, penalty of stoppage of one increment without future effect was imposed. The petitioner has also challenged the order dated 30th July 1994 (Annexure "E") of treating the suspension period as leave without pay and directing to recover subsistence allowance from the amount of gratuity.

2. The aforesaid orders are challenged on the ground that the charges levelled against the petitioner were vague and frivolous. It is submitted that by the learned advocate for the petitioner that no evidence was adduced and the order was passed with a view to harass the petitioner. It is further submitted by the learned advocate for the petitioner that the evidence produced by the petitioner was also not taken on record and the findings of the Enquiry Officer with regard to the main charge of remaining unauthorisedly absent at the head quarters and not performing the field duties for family welfare, are not proper.

3. The learned advocate, Mr. J.D. Ajmera, has submitted that the Authority has followed due procedure of law, and, so far as the findings of the Enquiry Officer are concerned, the said findings have been arrived at after affording full opportunity to the petitioner, and, ultimately, a lenient view was taken by the Authority by inflicting punishment of stoppage of one increment without future effect. He has, further, submitted that, while regularising the period of suspension under the provisions of Rule 152 of the BCSR, the Authority has passed the appropriate order.

4. Having heard the learned advocates for the parties and on going through the record of the case, I do not find any substance in the present petition in so far as the punishment of inflicting stoppage of one increment without future effect upon the petitioner is concerned. Further the aforesaid punishment is already implemented and the same is not assailable.

5. However, the order passed under sub-rule (2) of Rule 152 of the BCSR to treat the period of suspension as leave without pay and to recover the amount of subsistence allowance from the total amount of gratuity, appears to be quite unreasonable and arbitrary. The petitioner was not afforded any opportunity to show cause as to why and in what manner, the suspension period to be regularised while reinstating the petitioner on duty. Needless to say that to recover the amount of subsistence allowance tantamounts to depriving the delinquent's, the petitioner herein, right to earn livelihood under Article 21 of the Constitution of India and such recovery of subsistence allowance is not permitted. However, since the petitioner had retired from service, no recovery be made by the respondents qua subsistence allowance paid to the petitioner during the suspension period and, to that extent, the order dated 30th July 1994 (Annexure "E") is quashed and set aside.

6. The petition partly succeeds. The order dated 30th July 1994, (Annexure "E") passed by the respondents-authorities, treating the suspension period as leave without pay and directing to recover subsistence allowance from the amount of gratuity, is quashed and set aside. Rule is made absolute to the above extent only, with no order as to costs.

(Anant S. Dave, J.)
(swamy)